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271 NLRB No. 151

D--2055 Orlando, FL

#### UNITED STATES OF AMERICA

#### BEFORE THE NATIONAL LABOR RELATIONS BOARD

BELKO STEEL CORP.

and

Case 12--CA--11109

SHOPMEN'S LOCAL UNION NO. 741 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS,  $AFL\frac{L}{4}CIO$ 

## DECISION AND ORDER

Upon a charge filed by the Union 16 March 1984 the General Counsel of the National Labor Relations Board issued a complaint 5 April 1984 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

The complaint alleges that on 24 February 1984, following a Board election in Case 12--RC--6301, the Union was certified as the exclusive collective-bargaining representative of the Company's employees in the unit found appropriate. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed.Reg. 45922 (1981); Frontier Hotel, 265 NLRB 343 (1982).) The complaint further alleges that since 29 February 1984 the Company has refused to bargain with the Union. On 13 April 1984 the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 29 May 1984 the General Counsel filed a Motion for Summary Judgment.

On 1 June 1984 the Board issued an order transferring the proceeding to the

Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

The Company's answer admits its refusal to bargain and to furnish information, but attacks the certification's validity based on its objections to the election in the representation proceeding. The General Counsel argues that all material issues have been previously decided. We agree with the Ceneral Counsel.

The record, including the record in Case 12--RC--6301, reveals that an election was held 21 October 1982 pursuant to a Stipulated Election Agreement. The tally of ballots at the election showed that, of approximately 45 eligible voters, 20 cast valid ballots for and 20 against the Union; there were 2 determinative challenged ballots. The Company filed objections 27 October 1982. On 23 November 1982 the Regional Director issued his report recommending that the objections be overruled, that the challenge to the ballot of one employee be overruled, and that the challenge to the ballot of the other be sustained. The Company filed exceptions to the recommendations. On 7 February 1984 the Board issued its Decision and Direction (not reported in Board volumes) adopting the recommendations and directing the Regional Firector to open and count one challenged ballot. The revised tally of ballots shows a majority of valid votes cast for the Union. On 23 February 1984, pursuant to the Board's direction, the Union was certified as the exclusive bargaining representative of the employees in the stipuleted unit.

By letter dated 29 February 1984 the Union requested the Company to bargain and to furnish it certain information concerning unit employees' names,

It is well settled that in the absence of newly discovered or previously

unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding. See Pittaburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair

All issues the Company raises were or could have been litigated in the

In its answer to the complaint, the Company admits that it has refused to furnish the Union with the requested information, but defends its refusal to furnish such information on the ground that the information is not necessary and relevant for collective-bargaining purposes. It is well established, however, that such information is presumptively relevant for purposes of collective bargaining and must be furnished upon the collective-bargaining agent's it is to bargaining and must be furnished upon the collective-bargaining agent's intequest. Furthermore, the Respondent has not rebutted the relevance of the request. Furthermore, the Respondent has not rebutted the relevance of the information the Union requested. Accordingly, we find that no factual issues

labor practice proceeding.

<sup>.</sup> Rutters Linen Service, 256 NLRB 1171, 1172 (1981).

exist with regard to the Company's refusal to furnish the information the Union sought in its 29 February 1984 letter and that the Company's refusal to do so violated Section 8(a)(5) and (1) of the Act. Therefore, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

Findings of Fact

## I. Jurisdiction

The Company, a Florida corporation, fabricates steel materials at its facility in Orlando, Florida, where it annually purchases good and materials valued over \$50,000 directly from outside the State of Florida. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

# II. Alleged Unfair Labor Practices

# A. The Certification

Following the election held 21 October 1982 the Union was certified 24

February 1984 as the collective-bargaining representative of the employees in the following appropriate unit:

All hourly paid production and maintenance employees including truck drivers, shop janitors and leadmen including the leadmen of the fabrication shop employed at the Employer's plant located in Orlando, Florida; excluding office clerical employees, engineering employees, outside erection and installation employees, professional employees, salaried quality inspector, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

# B. Refusal to Bargain and Refusal to Furnish Information

Since 29 February 1984 the Union has requested the Company to bargain, and to furnish it information, and since 13 March 1984 the Company has re-

fused. We find that by its conduct the Company violated Section 8(a)(5) and (1) of the Act.

## Conclusions of Law

By refusing on and after 13 March 1984 to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and by refusing the Union's 29 February 1984 request for information, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement, and to provide the Union, on request, information necessary for collective bargaining.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Belko Steel Corp., Orlando, Florida, its officers, agents, successors, and assigns, shall

### 1. Cease and desist from

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- (a) Refusing to bargain with Shopmen's Local Union No. 741 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union with information relevant and mecessary for collective bargaining.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement, and provide the Union, on request, the information relevant and necessary for collective bargaining set forth in its 29 February 1984 letter:
  - All hourly paid production and maintenance employees including truck drivers, shop janitors and leadmen including the leadmen of the fabrication shop employed at the Employer's plant located in Orlando, Florida; excluding office clerical employees, engineering employees, outside erection and installation employees, professional employees, salaried quality inspector, guards and supervisors as defined in the Act.
- (b) Post at its facility in Orlando, Florida, copies of the attached notice marked ''Appendix.''<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon re-

If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

ceipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

14 August 1984

Donald L. Dotson, Chairman

Robert P. Hunter, Member

Patricia Diaz Dennis, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

#### NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Shopmen's Local Union No. 741 of the International Association of Bridge, Structural & Ornamental Iron Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union with information relevant and necessary for collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All hourly paid production and maintenance employees including truck drivers, shop janitors and leadmen including the leadmen of the fabrication shop employed at the Employer's plant located in Orlando, Florida; excluding office clerical employees, engineering employees, outside erection and installation employees, professional employees, salaried quality inspector, guards and supervisors as defined in the Act.

WE WILL, on request, furnish the Union as it requested in its 29 February 1984 letter the information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the bargaining unit.

	BELKO STEEL CORP.	
	(Employer)	
Dated By		
<b></b>	(Representative)	(Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 700 Twigg Street, Suite 511, P.O. Box 3322, Tampa, Florida 33602, Telephone 813--228--2662.